ISSN 1128/322X
SPRING-SUMMER 2022 | Vol. 28

The Cardozo Electronic Law Bulletin

Comparing the Marshall Plan and the European Next Generation UE. Models and Legal Tools of International and Supernational Cooperation to Promote Economic Development

Alessandra Pera

How Lender Governance is Affecting Corporate and Contract Governance

Tommaso Sica

Tecniche di gestione delle sopravvenienze: fra rinegoziazione, risarcimento ed impossibilità sopravvenuta di utilizzazione

Francesca Scordamaglia

CELB | THE CARDOZO ELECTRONIC LAW BULLETIN

The Cardozo Electronic Law Bulletin

Sito web: https://www.ojs.unito.it/index.php/cardozo/index
e-mail: celbulletin@gmail.com
 ISSN 1128-322X

CONTENTS

Vol. XXVIII Issue 1 2022

ALESSANDRA PERA

COMPARING THE MARSHALL PLAN AND THE EUROPEAN NEXT GENERATION UE.

Models and Legal Tools of International and Supernational Cooperation to Promote Economic Development[1]

Abstract The article analyzes and compares the European Recovery Plan of 1948, commonly known as the Marshall Plan, for the reconstruction of Europe after the Second World War (paragraphs 2, 2.1, 2.2), and the Next Generation EU (paragraphs 3, 3.1) through the lens and methods of legal comparison and historical analysis.
As the description of the law cannot ignore the historicization of the object of study, such comparison is carried out inductively, through the analysis of the legal mechanisms in their concrete attitudes and the construction of descriptive schemes of facts, having regard to the legal discipline, but also to the functional profiles and the context in which the rules are conceived.
Therefore, the author attempts to frame the two different models of international development cooperation by examining their forms and contents, as well as their methodological approaches and governance tools. This essay also takes a critical look at the system of controls called "vincoli esterni", which can be translated as external constraints or conditionalities. These controls are particularly relevant as long as aid, grants and loans are conditional on plans for structural reforms of the legal system (paragraphs 4, 4.1). The conclusive remarks point out how this system of conditionalities – which for the state takes the form of a debt to give or not to give, to do or not to do – can lead to forms of subordination and structural homologation of the member states. It affects sovereignty, the way how powers and competences are exercised, policy strategies and the relationship between the "lender" and the "borrower" are conceived and practiced in concrete.

Keywords: Marshall Plan, Next Generation EU, compliance strategies, conditionalities, economic development, comparative method, diachronic comparison.

[1] This article is part of the research funded by the Italian Minister of University and Research, under the program "Progetti di Ricerca di Rilevante Interesse Nazionale" (PRIN 2020), title: "Restore. Recovering the State Towards a Reformed Economy".

1. Introduction

The Italian National "Piano di Ripresa e Resilienza" (PNRR)[2] contains the guidelines that Italy has committed to follow in spending the money that has been allocated to the country within the Next Generation EU, better known as the Recovery Fund.[3] This is the Italian share of a significant intervention plan implemented by the EU with the aim of relaunching and strengthening the economies of the member states weakened by the Covid-19 pandemic. The exceptional nature of the pandemic event, which occurred alongside a major environmental crisis, required an equally exceptional economic intervention that has the aspiration of triggering a second New Deal with the dual objective of reinvigorating growth and promoting a green conversion of European economies.

This article aims to analyze some of the characteristic elements of the European Recovery Fund and some contextual factors by providing a diachronic comparison between the Recovery Fund and the Marshall Plan.

The objective of this article is therefore to analyze and compare the European Recovery Plan of 1948, commonly known as the Marshall Plan, for the reconstruction of Europe after the Second World War (paragraphs 2, 2.1, 2.2), and the Next Generation EU (paragraphs 3, 3.1).

The objectives and methods of legal comparison cannot be separated from historical analysis, as the description of the law cannot ignore the historicization of the object of study. According to Gino Gorla,[4] such comparisons are carried out inductively, through the analysis of the legal mechanisms in the concrete attitudes of the objects of study. Thus, historiography and legal comparisons can be seen as two activities based on pure knowledge and research, and the construction of

---

[2] The Italian plan is available online at https://www.mise.gov.it/index.php/it/68-incentivi/2042324-piano-nazionale-di-ripresa-e-resilienza-i-progetti-del-mise, retrieved on 9 June 2022.

[3] The EU plan is available online at https://ec.europa.eu/info/strategy/recovery-plan-europe_en, retrieved on 9 June 2022.

[4] G. Gorla, *Diritto comparato e diritto comune europeo*, Giuffrè, Milano, 1981, 53. Recently, M. Brutti, *Sulla convergenza tra studio storico e comparazione giuridica*, in M. Brutti & A. Somma (eds.), *Diritto, Storia e Comparazione*, Max Planck Institute for European Legal History, Frankfurt, 2018, 74; P.G. Monateri, *Comparative Legal Metods*, Elgar Publishing, Cheltenham, 2022, 66-70.

descriptive schemes of facts. The dialogue between historical analysis and legal science takes a further step when the investigation moves from the legal discipline to the functional profiles and the context in which the rules are conceived. As the functional profiles and the context become two lenses through which social formations can be viewed, they can enable scholars to describe a "space-time object" that is the product of various factors.

Therefore, this article will attempt to frame the two different models of international development cooperation by examining their forms and contents, as well as their methodological approaches and governance tools. This essay also takes a critical look at the system of controls called "vincoli esterni", which can be translated as external constraints or conditionalities. These controls are particularly relevant as long as aid, grants and loans are conditional on plans for structural reforms of the legal system (paragraphs 4, 4.1).

The first part of this article describes and analyzes the European Recovery Plan (ERP), while also providing an overview of the socioeconomic conditions in Europe after the Second World War. The formulation and the implementation of the plan are also discussed.

At the end of the Second World War, the European reconstruction process represented an unparalleled opportunity for the US government to expand its sphere of influence over Europe by providing European countries with economic aid. Thus, starting in July 1945, millions of dollars began to flow into depleted European coffers. This influx of money was subsequently accompanied by the introduction of an elaborate plan for providing these countries with systematic economic aid. In exchange for the assets, raw materials, and liquidity the plan provided, the recipients had to agree to align themselves with the Atlantic sphere and to use the aid to modernize their economies. In the following three years, the United States distributed goods and resources valued at around $13 billion, which was equal to about 1% of the country's GDP. This substantial sum was intended to facilitate the continuation of the post-war process of economic recovery, and to strengthen transatlantic cooperation.

The second part of this essay examines the Next Generation EU (NGEU), which is a temporary recovery instrument, worth €750 billion, that has allowed the Commission to secure funds on the capital market to repair the immediate economic and social damage caused by the pandemic. The NGEU's objectives including supporting the green transition and the digital transformation and building resilience to ensure that Europe is able to meet its current and future challenges. The EU's long-term budget, combined with the NGEU, together constitute the largest stimulus package ever funded by European institutions.

The new long-term budget aims to strengthen the flexibility mechanisms to ensure that previously unforeseen needs can be met when they arise. The Recovery Fund is also supported by other types of funds, such as REACT-EU (Recovery Assistance for Cohesion and the Territories of Europe). The funding was divided between the European Regional Development Fund (ERDF), the European Social Fund (ESF), and the Fund for European Aid to the Most Deprived (FEAD). This additional funding was disbursed in the 2021-2022 period under the NGEU, and, previously, in 2020, through a targeted review of the current financial framework, together with additional European programs or funds, such as Horizon, Invest-EU, and the Fund for Rural Development.

Among the political and the economic objectives of the two plans were: preventing the collapse of economic activity, achieving economic stability to help restart the European economy on a large scale, fostering international and regional cooperation, stimulating public and private investments to facilitate recovery from the pandemic crisis or post-war reconstruction, defining a decentralized administrative body that enables cooperation, and ensuring an optimal degree of organization.

In quantitative terms, the European Recovery Fund is an important intervention, but it certainly does not represent the majority of the efforts world economies are making to get out of the current crisis. Indeed, all the interventions put in place by the individual states, which are financed by their national budgets, are added to it, as are all of the interventions of non-EU countries.

All these interventions are attempts to respond to the exceptional systemic shock these countries have experienced in the last three years.[5]

Helping European countries cope with a similar state of emergency and an exceptionally large shock were among the central aims of the so-called Marshall Plan.[6] At the end of the Second World War, the US invited the European states to propose an economic reconstruction project for which they would be given substantial financial support (including in the form of non-repayable grants).

More precisely, on July 12, 1947, at the Paris Conference for European Economic Cooperation, the US asked 16 European countries to "unite" in quantifying the overall amount of reconstruction aid they were requesting, and created the Committee for European Economic Cooperation (CEEC). Then, on April 2, 1948, the

[5] On the permanent condition of state of exception, P.G. Monateri, *L'augurio. Impero, legge e stato di eccezione*, Mimesis, Milano, 2017.

[6] M. Campus, *L'Italia, gli Stati Uniti e il piano Marshall*, Laterza, Roma-Bari, 2008.

US Congress approved the Foreign Assistance Act, Title I, Economic Cooperation Act, known as the European Recovery Program (ERP).[7]
It is evident that the economic, social, and cultural contexts in which the two events occurred were totally different. Thus, while thinking about the future based on the post-war experiences of the mid-20th century is a reconstructive exercise intended to give "possible readings" of the phenomena, it is not expected to be useful for researchers seeking to insert scenario data into the estimation models often used by economists.
Moreover, the writer has no specific competence in this regard.
It must be reiterated that the Marshall Plan was conceived as an initiative aimed at providing aid to countries devastated by the Second World War, which is an event that is very different from the current pandemic crisis. However, there are many very authoritative commenters who have compared today's situation to that of a post-war economy. For example, the current President of the Italian Council Mario Draghi stated on March 25, 2020, in an article written for the Financial Times that wars are “the most relevant precedent” of the contemporary emergency. [8]
Moreover, the European Recovery Fund has been developed along specific strategic axes, including the transition to a green economy, which adds a certain degree of complexity to the comparative reasoning. In recent years, climate change has gone from being a marginal issue to being a global priority.[9]

2. Post-war Europe and the Marshall Plan

Between 1948 and 1951, the United States embarked on what many consider to be one of the most successful foreign policy initiatives and most effective foreign aid programs in history. The Marshall Plan and the European Recovery Program (ERP) can be characterized as ambitious efforts to stimulate economic growth in post-World War II Europe, which was at that time depressed and nearly bankrupt; to prevent the spread of communism; and to encourage the development of a healthy and stable world economy. The plan was designed to achieve the following three objectives:
• expanding European agricultural and industrial production;

[7] The Foreign Assistance Act approved on April 3, 1948, together with the Economic Cooperation Act of 1948 (Title I). See J.J. Joseph, *European Recovery and United States Aid*, in *Science and Society*, 1948, 293 ss..
[8] M. Draghi, *We face a war against coronavirus and must mobilise accordingly*, in *Financial Times*, 25 March 2020.
[9] For nearly three decades, the UN has brought together numerous states for global climate summits, called the COP, or the “Conference of the Parties”. The first post-pandemic summit was the 26th annual summit (hence the name COP26), which was held in Glasgow and was chaired by the United Kingdom in November 2021. The tone of the meeting, as well as the commitments individual states have made, suggest that the aim of building a green economy is much closer than it was in the past. As far as Europe is concerned, these commitments are combined with the investment prospects in the Recovery Fund that are focused on creating a European green economy.

• restoring sound currencies, balance sheets, and public finances in European countries; and
• increasing international trade among European countries and between Europe and the rest of the world.

The Marshall Plan was adopted at a time when the global system was dysfunctional. Liberal scholars have called this situation a “market failure” or a “global imbalance”, while realist scholars have called it a “global power vacuum” with “hegemonic opportunities”. There were previous interlinked episodes of massive unemployment and wars that had been devastating for both the broader populations and the ruling classes in Europe. On these occasions, classic capitalist systems had failed, both politically and economically. At the same time, the communists were gaining ground. The Soviet Union had embarked on a rapid project of industrialization, especially in heavy industries, after the launch of Stalin’s Five-Year Plan in 1928. The economic achievements and political ideals of communism had become very popular among the populations of European countries. After the Second World War, many cities, including some of the major industrial and cultural centers of Great Britain, France, Germany, Italy, and Belgium, had been destroyed. Reports provided to US Secretary of State George C. Marshall suggested that some regions of the continent were on the brink of famine because agricultural and food production had been disrupted by fighting. In addition, the transport infrastructure of many regions, including railways, roads, bridges, and ports, had suffered extensive damage in air strikes; and the naval fleets of many countries had been sunk.[10] The European nations were thus accumulating a growing dollar deficit. As a result, the prospects for future growth in Europe were low, and trade between European nations was stagnant. According to many observers, the declining economic conditions were generating pessimism about the future of Europe, which helped to fuel class divisions and political instability. The communist parties, which were already well established in major European countries such as Italy and France, were threatening to rise to power. The potential effects of these developments on the United States were large and varied. Although the Cold War was still in its infancy, Soviet entrenchment in Eastern Europe was well underway. As early as in 1947, the economic and political tensions that afflicted Great Britain had pushed the country’s government to announce the withdrawal of British military troops engaged in Greece and Turkey, which forced the United States to assume greater obligations to defend the security of the region.

---

[10] C, Turnoff, *The Marshall plan: Design, accomplishments, and significance*, 2018, on line at https://sgp.fas.org/crs/row/R45079.pdf, retrieved 9 June 2022.

Indeed, it could be argued that the only world power not structurally affected by the conflict was the United States. The Marshall Plan was constructed based on this specific set of socio-political conditions. The plan was proposed in a speech given by Secretary Marshall at Harvard University on June 5, 1947. Recognizing the need for the participation of Congress in the development of a meaningful assistance package, Marshall's speech did not present a detailed and concrete program. Instead, he simply suggested that the United States would be willing to help by drafting a program and providing assistance,[11] while maintaining the pretense that this program would be a joint effort that the European nations would agree to take part in. Thus, from the outset, the Marshall Plan was formulated as a collaborative effort between the Truman administration and Congress, and between the US and European governments. Conditions on the European continent in 1947, as described by Secretary Marshall and other US officials at the time, were dire.

The Truman Doctrine, enunciated in March 1947, stated that US policy was based on securing support for nations threatened by communism. In short, the specter of the economic collapse of Europe and of a communist takeover of European political institutions threatened to eradicate everything the United States had claimed to be fighting for since its entry into World War II: a free Europe in an open economic system.

According to one shared historical reconstruction, the Truman Doctrine and the Marshall Plan, together with US military strategy, which was officially promulgated in the signing of the Atlantic Pact, sanctioned the US interventionist policy aimed at breaking the alliance that had won the war by opposing the Soviet Union.[12]

Of course, this is only one of the possible readings and reconstructions of these events. The American historiography that has dealt with these issues can be divided into three main strands.

The traditionalist or orthodox strand reconstructed the Truman Doctrine as a consequence of Soviet aggression, which left the United States with no choice but opt for the containment of the expansionism of the USSR.[13]

---

[11] E. Rossi, *Il Piano Marshall e l' "Europa"*, Istituto dell'Enciclopedia Italiana, Roma, 1983.

[12] A.A. Offner, *Another Such Victory: President Truman and the Cold War, 1945-1953*, SUP, Stanford, 2002; S.R. Williamson & S.L. Rearden, *Onset of the Nuclear Age*, in Id., *The Origins of US Nuclear Strategy*, Palgrave Macmillan, New York, 1993, 1-24.

[13] Few for all, F.R. Dulles, *America's Rise to World Power, 1898-1954*, Harper & Brothers, New York, 1955; A. Schlesinger, *Origins of the Cold War*, in *Foreign Affairs* 46.1, 1967, 22-52; E.E. Spalding, *The First Cold Warrior*, University Press of Kentucky, Lexington, 2006.

A second line of research is the revisionist strand, which argued that the Truman Doctrine represented a real ideological manifesto that described the US strategy of world economic hegemony.[14]

Finally, the post-revisionist approach attempted to go beyond the ideological and political alignments favoring either the US or the USSR to investigate the multiple, complex, and intricate reasons that, with hindsight, appear to have determined a certain alignment between Europeanism and Atlanticism,[15] and that have today re-emerged in response to other more recent war events.[16]

2.1 The Marshall Plan: formulation, governance, and implementation

Most European nations responded favorably to Secretary of State Marshall's initial proposal. After insisting on a playing a role in the design of the program, 16 nations participated in the Paris Conference (on July 12, 1947), at which the Committee of European Economic Cooperation (CEEC) was established. The committee was tasked with gathering information on Europe's requirements, and on the existing resources that could be mobilized to meet these needs. The final report (published in September 1947) envisaged a four-year program to encourage production, create internal financial stability, develop economic cooperation between participating countries, and solve the problem of the then existing deficit with the US dollar zone. Although Europe's net balance-of-payments deficit with the dollar zone for the 1948-1951 period was originally estimated at around $29 billion, the report called for the US to provide $19 billion in assistance (an additional $3 billion was expected to come from the World Bank and other sources). Cautiously, in order to avoid the impression that the US was seeking to isolate the Soviet Union in this starting phase of the Cold War, Marshall's invitation did not specifically exclude any European nation. However, the Soviet Union and its satellite countries refused to participate in the joint rehabilitation program for two fundamental reasons: first, the demand that nations disclose their economic plans was seen as violating Soviet state sovereignty; and, second, the main interest of the United States appeared to be to increase its exports. The CEEC proposal demanded that states adhere to

---

[14] Among others, D. Horowitz, *The Free World Colossus: A Critique of American Foreign Policy in the Cold War*, Hill and Wang, New York, 1971; R.M. Freeland, *The Truman Doctrine and the Origins of McCarthyism: Foreign Policy, Domestic Politics, and Internal Security, 1946-1948*, New York University Press, New York, 1985; W. LaFeber, *America, Russia and the Cold Wa. 1943-1980*, John Wiley & Sons, New York, 1980.

[15] Again few for all, J.L. Gaddis, *The emerging post-revisionist synthesis on the origins of the Cold* War, in *Diplomatic History*, 7.3, 1983, 171-190; J.S. Walker, *Historians and Cold War Origins: The New Consensus*, in G.K. Haines & J.S. Walker (eds.), *American Foreign Relations: A Historiographical Review*, Greenwood Press, Westport, 1981, 207 ss..

[16] A. Somma, *Sotto l'atlantismo niente. L'Europa messa a nudo dalla guerra ucraina*, in *La Fionda*, 3 May 2022, 1-9.

certain guidelines, and accept a certain approach to economic policy. Specifically, European nations were required to:

- make specific commitments to fulfil production programs;
- take immediate steps to create internal monetary and financial stability;
- express a greater determination to reduce trade barriers;
- consider alternative sources of dollar credit, such as the World Bank;
- formally recognize their common goals and take common responsibility for their achievements; and
- set up an international organization to act as a coordinating agency for the implementation of the program.

From the outset, the Truman administration made Congress a key player in developing the new foreign aid program, consulting its members throughout the process. A meeting on June 22, 1947, between key congressional leaders and the president led to the creation of the Harriman, Krug, and Nourse committees. The committee headed by US Secretary of Commerce Averell Harriman, which included consultants from private industry, labor representatives, economists, and others, examined Europe's needs. The committee led by US Secretary of the Interior Julius A. Krug assessed the physical resources of the United States that were available to support this program. The third committee led by the Chairman of the Council of Economic Advisors Edwin G. Nourse studied the effects that an increase in the export burden would have on US production and domestic prices.[17] The House of Representatives formed the Restricted Committee for Foreign Aid, headed by Representative Christian A. Herter, to handle guidance and monitoring tasks. Before the administration's proposal could be considered, conditions in some countries had deteriorated so badly that President Truman called for the release of a special interim aid package to ensure that Europe had sufficient food and fuel to get through the winter. The more elaborate system envisaged by the Marshall Plan was authorized. Congress then approved $522 million in interim aid to France, Italy, and Austria. The authorization of the aid package was signed by President Truman on December 17, 1947.

This decision was also accelerated by the administration's concerns about a meeting of the European communist parties in Poland (on September 22-27, 1947) in which they stated their opposition to "the American subjugation plan for Europe". Even West Germany was still being assisted through the US government and the occupied areas relief program. The State Department's proposals for a European recovery program were formally presented by Truman in a message to

[17] J. Magid, J., *The Marshall Plan*, in *Advances in Historical Studies*, 1.01, 2012, 1, on line at https://www.scirp.org/html/26090.html, retrieved 9 June 2022.

Congress on December 19, 1947. He proposed a 4.5-year program of aid to 16 Western European countries in the form of grants and loans. Although the total program provided for approximately $17 billion in aid, the administration's bill, which was introduced in early 1948 by Representative Charles Eaton, Chairman of the House Foreign Affairs Committee, provided for aid in the amount of $6.8 billion to cover the first 15 months of the program.[18]

More precisely, it was expected that within four years, the United States would provide European states with financial assistance, primarily through grants (mainly in the form of food aid, raw materials, and materials for industry), and to a much smaller extent through long-term loans at subsidized rates. Each country that participated in the program was required to present its own plan for economic reconstruction.[19]

All of the national plans would then be sent to the European Organization for Economic Cooperation (EOEC),[20] established in 1948, which was tasked with approving and coordinating the various plans of the European states that would ultimately be merged into the ERP. The ERP, in turn, was managed by a US government agency, the Economic Cooperation Administration (ECA), which was set up to monitor and approve the projects proposed in the national plans, and to verify their efficient execution. The ECA also had the power to terminate the provision of assistance or take other corrective actions against any participating country when it failed to comply with the obligations it had assumed in the bilateral and multilateral agreements it had signed with the US regarding its use of the financial assistance; when the country's activities were not in alignment with the conditionalities provided for accessing the Marshall Plan funds; or, finally, when, due to changed conditions, the provision of the assistance was no longer consistent with the national interests of the United States.[21]

The ECA operated on three different levels: through its headquarters in Washington DC, led by Paul G. Hoffman, which had continuous exchanges of information with the Joint Committee on Foreign Economic Cooperation, and with the National Advisory Council on International Monetary and Financial Problems (NAC); through an inter-ministerial committee set up under the Bretton Woods

---

[18] C. Turnoff, *The Marshall Plan: Design, Accomplishments, and Significance*, 2018, cit. above.

[19] For a deep and comprehensive analysis on the "Piano Quadriennale di Ricostruzione per l'Italia", see F. Fauri, *Il Piano Marshall e l'Italia*, Il Mulino, Bologna, 2011; B. Steil, *Il Piano Marshall. Alle origini della guerra fredda*, Donzelli Editore, Roma, 2018.

[20] In Italy, the Convention for European Economic Cooperation (Paris 16 April, 1948) was enforced by the L. 4 agosto 1948, n. 1107, Ratifica ed esecutorietà degli Accordi internazionali firmati a Parigi il 16 aprile 1948. See C. Spagnolo, *La stabilizzazione incompiuta. Il piano Marshall in Italia (1947-1952)*, Carocci, Roma, 2001, 67; G. Savarese, *Note sulla «ricostruzione» in Italia*, in *Quaderni storici*, 34.1, 1977, 249 ss.

[21] Sec. 118, Economic Cooperation Act of 1948. For a comment, see F. Fauri, *Il Piano Marshall e l'Italia*, cit. 2010, 80.

agreements to coordinate US foreign policies, which had the task of managing the ERP's finances; and through the Public Advisory Board, a consultancy body made up of highly qualified technicians. There was also a Special Representative of the ECA assigned to the EOCE headquarters at the Hotel Talleyrand in Paris, from which Averell Harriman coordinated the special missions for economic cooperation set up in the individual European capitals of the countries receiving ERP funds.

In short, there was a very stringent system of control that was exerted both centrally and through audits, monitoring, and inspections carried out by the ERP's own emissaries within the countries that were receiving the aid.[22]

For the initial implementation of the Foreign Assistance Act, title I, Economic Cooperation Act, which was approved in April 1948, $4 billion was allocated to the ERP in its first year. By limiting the authorization to one year, Congress gave itself ample opportunity to oversee the ongoing implementation of the European recovery program, and to consider further funding. The additional funds for the Marshall Plan were allocated and authorized by the US Congress on three separate occasions. In subsequent years, Congress held hearings on the Marshall Plan, debated its progress, and further amended the legislation. In addition, as part of the initial authorization, a joint congressional control committee was created to monitor the implementation of the program, and to provide updates to Congress. Congress voted to approve the necessary funds on an annual basis until June 1952.

2.2 The national plans

As was mentioned above, the Economic Cooperation Act stated that after each national plan had been approved by the ECA, each European state requesting financial assistance had to sign an agreement with the United States government. The agreement outlined the commitments made to the beneficiary state and the conditionalities the country would have to meet to receive the ERP funds, including the obligation to set up a permanent organization aimed at promoting the integration and collaboration of the European states.[23]

[22] For a comprehensive analysis and for many of the relevant references, even herein cited, see F. Salmoni, *Piano Marshall, Recovery Fund e il containment americano verso la Cina. Condizionalità, debito e potere*, in *Costituzionalismo.it*, 2, 2021, 54 ss.

[23] Sec. 115, lett. b, Economic cooperation act of 1948, stated that «the provision of assistance under this title results from the multilateral pledges of the participating countries to use all their efforts to accomplish a joint recovery program based upon self-help and mutual cooperation as embodied in the report of the Committee of European Economic Cooperation signed at Paris on September 22, 1947, and is contingent upon continuous effort of the participating countries to accomplish a joint recovery program through multilateral undertakings and the establishment of a continuing organization for this purpose». The agreement between Italy and the US was signed on June 28,1948, and enforced with the L. 4 August 1948, n. 1108. "Ratifica ed

Entering into bilateral agreements was a very sensitive issue for most European countries, mainly because they were afraid that their national sovereignty and autonomy could be compromised by the clauses and the provisions of international treaties. Countries also felt threatened because the ERP additionally introduced an ill-defined level of US control over the program that gave Congress the power to question the allocation of new funds every year.[24]

In bilateral agreements, each European state agreed to submit to the conditionalities provided by the ERP by undertaking, among other commitments, to promote industrial and agricultural production through specific projects approved by the ECA; to adopt the financial and monetary measures necessary to stabilize its currency; to fix or maintain a valid exchange rate; to balance its public budget as soon as possible; and, more generally, to restore or maintain confidence in its monetary system, to increase international trade by reducing barriers to the free trade of goods and services, and to provide the United States with the goods it needed.[25] We will return to this cross-compliance system later in paragraph 4.

The ECA reached its decisions unilaterally and on the basis of its own assessments of the amount of money that would be allocated to each applicant country, dividing the funding between non-repayable subsidies and loans.

The grants took the form of free supplies of grain and raw materials for industries (e.g., coal, crude oil, cotton, copper, iron, and steel), fertilizers, scarce medicines (e.g., penicillin, streptomycin, liver extract, insulin, blood plasma), and machinery for industrial plants.

Each state sold the material goods sent from the United States internally using the national currency, and the proceeds flowed into a "counterpart fund", which in Italy was called the "Lire Fund".[26] These resources were, in turn, to be invested in infrastructure and services according to a plan agreed upon by the national government and the ECA, whereby the ECA had a veto power over their use.

---

esecutorietà dell'Accordo di cooperazione economica fra l'Italia e gli Stati Uniti d'America, concluso a Roma il 28 giugno 1948".

[24] G. Bossuat, *L'Europe occidentale à l'heure américaine: le Plan Marshall et l'unité européenne, 1945-1952*, Editions Complexe, Brussels, 1992.

[25] Under Sec. 102, lett. b, Economic cooperation act of 1948, l'ERP had the function of «furnishing material and financial assistance to the participating countries in such a manner as to aid them, through their own individual and concerted efforts, to become independent of extraordinary outside economic assistance within the period of operations under this title, by: (1) promoting industrial and agricultural production in the participating countries; (2) furthering the restoration or maintenance of the soundness of European currencies, budgets, and finances; and (3) facilitating and stimulating the growth of international trade of participating countries with one another and with other countries by appropriate measures including reduction of barriers which may hamper such trade».

[26] F. Fauri, *Il Piano Marshall e l'Italia*, cit. 2010; R. Ventresca, *Prove tecniche d'integrazione: l'Italia, l'Oece e la ricostruzione economica internazionale (1947-1953)*, Milano: Franco Angeli, 2017, 34 ss..

Conditional aid was added later. This type of aid was aimed at stimulating intra-European trade, and was governed by the intra-European payment agreement (signed in 1948 and renewed in 1949).
The loans, by contrast, were intended for the purchase of machinery and equipment in the United States under particularly advantageous conditions.[27]

3. Europe, Italy, and the Next Generation EU

As was mentioned in the introduction and as is generally known, the Recovery Fund has been created by the European Union to provide subsidies and loans to its member states that have been socially, economically, and financially overwhelmed by the challenges associated with managing the Covid-19 pandemic.
The European Union has responded to the pandemic crisis by introducing the NGEU, an unprecedented joint program that envisages huge investments and reforms aimed at accelerating the ecological and digital transition; improving professional training; and, among other goals, promoting gender, intergenerational, and territorial equality.
Furthermore, the effects of the pandemic and the stated intention of the European Commission to make Europe the first climate-neutral continent by 2050 through the European Green Deal have facilitated the already evident and shared willingness of the member states to adopt the current economic recovery plan, and to formulate a coordinated response to these challenges at both the economic and the structural level. The NGEU marks a departure from previous EU policies. The resources that are to be deployed to revive growth amount to €750 billion, more than half (€390 billion) of which are in the form of grants. The resources allocated to the Recovery and Resilience Fund (RRF) are financed through the issuance of EU bonds, which are leveraged by raising the ceiling on the EU's own resources.
The NGEU initiative channels significant resources to countries such as Italy, which, despite having per capita income levels in line with the EU average, has recently suffered from low economic growth and high unemployment rates. The NGEU funds will enable Italy and some other EU members to restart investments and increase employment levels, and to resume the process of catching up to the richer countries of the EU.
The NGEU program includes two support tools for member states. The REACT-EU was conceived as a shorter-term program mainly aimed at financing the initial phase of the economic recovery in 2021 and 2022. The RRF, by contrast, has a duration of six years, from 2021 to 2026.

[27] F. Salmoni, *Piano Marshall, Recovery Fund e il containment americano verso la Cina*, cit., 58.

The NGEU is designed to promote a robust recovery of the European economy under the banner of the ecological transition, digitization, competitiveness, training and social resilience, and territorial and gender inclusion. The Device for Recovery and Resilience (through the RRF Regulation) sets out the six major areas of intervention the PNRRs are expected to focus on:[28]

- the green transition
- the digital transformation
- smart, sustainable, and inclusive growth
- social and territorial cohesion
- health and economic, social, and institutional resilience
- policies aimed at the new generations of children and young people

The requirement that all of the planned investments and reforms respect the principle of not causing significant harm to the environment is a direct result of the European Green Deal and the double EU objective of achieving, as was already mentioned, carbon neutrality by 2050, and reducing greenhouse gas emissions by 55% compared to the 1990 scenario for 2030. The NGEU requires countries to devote a minimum of 37% of the planned investment and reform spending in the NRPs to supporting climate goals.[29]

The plans must also contribute to the achievement of the environmental objectives set at the EU level by developing digital technologies, protecting water and marine resources, transitioning to a circular economy, reducing and recycling waste, preventing pollution, and protecting and restoring healthy ecosystems. In addition, the national plans must dedicate at least 20% of the total expenditure on investments and reforms related to the digital transition. The objectives contained in the Digital Economy and Society Index (DESI)[30] and in the Commission's

[28] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, on line at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0241, retrieved 9 June 2022.

[29] Communication from the Commission, Technical guidance on the application of the 'do not cause significant harm' principle under the Resilience and Recovery Facility Regulation, (2021/C 58/01), on line at https://ec.europa.eu/info/sites/default/files/c_2021_1054_it.pdf, retrieved 9 June 2022.

[30] The Digital Economy and Society Index (DESI) summarizes indicators of Europe's digital performance, and tracks the progress of EU countries. The European Commission has been monitoring the member states' digital progress through the Digital Economy and Society Index (DESI) reports since 2014. The DESI 2021 reports are based mainly on 2020 data, and present the state of the digital economy and society in the first year of the pandemic. DESI 2021 has been adjusted to reflect the two major policy initiatives expected to have an impact on the digital transformation in the EU in the coming years: the Recovery and Resilience Facility (RRF) and the Digital Decade Compass. For more details, see https://digital-strategy.ec.europa.eu/en/policies/desi#:~:text=The%20Digital%20Economy%20and%20Society%20Index%20(DESI)%20summarises%20indicators%20on,(DESI)%20reports%20since%202014, retrieved 9 June 2002.

strategy on the "digital future of Europe"[31] essentially aim to improve individual digital performance. The digital pillar of the member states' national plans must include the rationalization and the digitization of public administration, and the development of digital public services through improved connectivity as a result of the spread of very high-capacity telecommunication networks (TLC). It is therefore necessary for the states to carefully safeguard value chains and critical infrastructure, to guarantee access to raw materials of strategic importance, and to protect communication systems. Moreover, to safeguard and protect the new generations of Europeans, the member states must seek to bridge the generational gaps and to strengthen active labor policies through their national plans.
Given the specific challenges Italy faces – which include the need to modernize the public administration; to strengthen the production system; and, more generally, to intensify efforts to combat inequalities, social exclusion, and poverty – the NGEU can be seen as an opportunity for Italy to move toward achieving sustainable and lasting economic growth.

3.1 The Italian plan

Italy is the leading beneficiary, in absolute monetary terms, of the two main instruments of the NGEU: the Fund for Recovery and Resilience (RRF) and the Recovery Assistance Package for Cohesion and the Territories of Europe (REACT-EU). The RRF alone guarantees resources of €191.5 billion to be used in the 2021-2026 period, of which €68.9 billion are in the form of non-repayable grants. Italy also intends to make full use of its financing capacity through RRF loans, which is estimated at €122.6 billion. The National Recovery and Resilience Plan (PNRR) is the RRF mechanism through which member states are required to present an investment and reform package. The PNRR, which is divided into six missions and 16 components, benefits from the close dialogue that has taken place in recent months with the EU institutions, and, in particular, with the Commission, regarding the regulation of the RRF.
The six missions of the Italian plan are: digitization, innovation, competitiveness, culture, and tourism; the green revolution and the ecological transition; infrastructure for sustainable mobility; education and research; inclusion and cohesion; and health. The plan also includes an ambitious reform project. The government intends to implement four major contextual reforms: public

[31] The strategy "Shaping Europe's digital future" is illustrated online at https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/shaping-europe-digital-future_en, retrieved 9 June 2022.

administration, justice, simplification of legislation, and promotion of competition.
The PNRR represents the cornerstone of this project, and is based on a framework that is consistent with the other economic planning tools available within the European Multiannual Financial Framework. It is expected to meet these objectives by translating them into reform and investment actions, while adhering to certain execution schedules and being subject to constant public monitoring of its progress.
The PNRR will contribute to increasing the role of the south in the effort to restart the country's economy, with the aim of helping the region reach its unrealized growth potential, while also seeking synergies and complementarities with the European and the national resources provided by the 2021-2027 cohesion policy. Furthermore, together with other actions the government has already undertaken, it aims to strengthen the health care system, which was hit hard by the pandemic. Two fundamental guidelines have emerged in this process: the importance of creating local health and social care units that can provide networks of assistance close to the citizens; and the need to promote the technological and structural modernization of hospitals, telemedicine, and basic and applied research.
Within the general objectives of the Italian plan, three shared strategic axes have been developed at the European level: digitization and innovation, the ecological transition, and social inclusion.
The digitization and innovation of processes, products, and services are considered crucial for the transformation of the country. Addressing the digital technology skills deficits of Italian citizens through the promotion of investments in technologies, infrastructure, and digital processes is essential to improve Italian competitiveness in Europe and in the world.
The digital revolution represents an extraordinary opportunity to increase productivity, innovation, and employment; to guarantee wider access to education and culture; and to bridge territorial gaps. The Italian government aims to make the country one of the first to achieve the objective of the European Commission, set by the "2030 Digital Compass Communication",[32] to create a completely digital society. One of the first steps in realizing this goal is to expand the availability of high-speed connectivity throughout the country. To implement this objective, all of the most advanced technologies must be adopted, and the regulatory framework must be adapted.

[32] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2030 Digital Compass: The European Way for the Digital Decade. Com/2021/118 Final, on line at https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52021DC0118, retrieved 9 June 2022.

To allow for effective interactions between citizens and the PA, it is necessary to strengthen and accelerate full interoperability between public bodies and their information bases; to strengthen digital identities; and to improve the services offered to citizens for making payments and communicating with the PA.
The plan accepts the need to strengthen the country's health information technology by updating electronic health records, which would improve digital health services and enhance national clinical data. In addition, the plan strengthens IT security with the involvement of law enforcement agencies through a broad National Strategy for Digital Skills, which seeks to promote widespread improvements in the digital and technological skills of the workforce.
The ecological transition is one of the fundamental foundations on which the new Italian and European development models are built. Through joint interventions designed to reduce polluting gas emissions and to minimize the impact of production on the environment, the aim of the transition is not only to improve the quality of life and environmental safety, but also to leave a greener country and a more sustainable economy to future generations.
As Italy is particularly exposed to climate change, it must accelerate its progress on the path to achieving carbon neutrality by 2050 and environmental sustainability. Despite the challenges Italy faces, the country has made significant progress in addressing climate change, as its per capita emissions of greenhouse gases are currently lower than the EU average. The PNRR is a good opportunity for Italy to accelerate its ecological transition and to overcome barriers that have proved difficult to deal with in the past. The plan recommends the implementation of advanced monitoring and analysis systems to help prevent the negative effects of climate change. It also proposes investments aimed at ensuring that critical infrastructure, energy networks, and all other forms of infrastructure that are exposed to climatic and hydrogeological risks are sufficiently robust.
The third strategic axis is social inclusion, which is one of the main goals of the European Union. Among the objectives of the PNRR are ensuring full social inclusion, promoting gender equality, and protecting and enhancing human capital.
The plan provides for decisive action to promote gender equality, including through the provision of support for female employment and entrepreneurship; the implementation of various enabling interventions, starting with social services such as nursery schools; and the formulation of policies to encourage work-life balance.
The commitment of the plan to reduce job insecurity and high unemployment rates, which mainly affect young people, and especially women, is also relevant. The lines of proposed action include supporting job creation, job training, and

worker retraining, as well as providing income to workers during employment transitions. To address pockets of poverty and backwardness, both old and new, targeted interventions are planned for areas identified as fragile. Moreover, investments will be made in social housing. These interventions are expected to enhance the resilience and the territorial cohesion of the country's inland, mountain, and island areas, without neglecting the roles of sports and culture in strengthening social inclusion.

In summary, the government asked for the maximum available RRF resources, amounting to €191.5 billion. Of this sum, €68.9 billion are being provided as grants and €122.6 billion are being provided as loans. The first 70% of the requested subsidies have already been allocated by the official version of the RRF regulation, while the decision about the allocation of the remaining share will be made by June 30, 2022, on the basis of the GDP trends of the member states for 2020-21 reported in official statistics. Using all of the resources made available by the RRF, including loans, will allow Italy to fill its large infrastructure investment gap, which has also been linked to cuts in public spending in the years following the 2010-11 sovereign debt crisis; and to help close the country's wide social and territorial gaps, particular those in the south.

4. National plans, external constraints, and compliance strategies

In light of the contexts provided above, it is clear that both the US and the EU plan have several elements in common, including that in both cases, the aid is provided in part through grants and in part through long-term subsidized loans.

As was mentioned, the United States provided countries in need with raw materials and basic necessities. The European Union, by contrast, does not offer material goods, but instead makes financial contributions through the European Commission and the European Union budget that it qualifies as non-refundable financial support, i.e., as non-repayable grants (art. 2.2, reg. 2021/241).[33] However, in this case, due to the modification of the Own Resources Decision, which raised the ceilings on the amounts member states must transfer to the EU budget, and that planned for the introduction of new own resources, the "non-repayable" shares will also be returned by the member states.[34]

With regard to loans, the Marshall Plan provided loans with a duration of 30-40 years at a rate of 2.5%, while the EU Recovery Fund provides loans that must be

---

[33] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, on line at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0241, retrieved 9 June 2022.

[34] F. Salmoni, cit., 66 ss.

repaid by 2058 at reasonably advantageous interest rates, as these loans are financed through the bonds that are issued by the European Commission and are later sold on the financial markets to supply the member states with the funds they require.

As was the case for the beneficiaries of the Marshall Plan, states that are applying for funding from the Recovery Fund must present a National Plan for Recovery and Resilience containing the details of their planned reforms and investments before being given access to the funds.

The analysis carried out so far has highlighted an important aspect from the point of view of European economic governance: the redistributive effects between the member states, induced by the NGEU, are activated by an initiative of the European Commission, and are made possible using the MFF.[35] Thus, since the international financial crisis led to EU governance being centered on the decisions of the European Council and on the intergovernmental method, the qualitative leap in EU integration is once again based on two cornerstones of the community method. The actual payments to member states of the larger components of the NGEU require the formulation of national strategies and plans that incorporate the priorities identified by the country-specific recommendations of the European Semester. In particular, to obtain approval from the European Commission and the other European institutions involved, the individual beneficiary states are called upon to formulate a strategy and to define their specific investment and reform projects through their national plans, and to be prepared to specify all of their projects and their implementation methods between 2021 and 2024.

The indications contained in the "Supporting Member States recommendations",[36] and, in particular, in the RRF, confirm that effective access to the most relevant

[35] The 2021-2027 long-term EU budget & Next Generation EU, also known as Multiannual Financial Framework (MFF) running from 2021 to 2027, are supporting the recovery plan for Europe. They include the new EU budget structure, funding programs, allocations per member state, and data on spending and revenue. For a general overview, see https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027_en, retrieved 9 June 2022.

[36] The Supporting Member States (SURE) «acts as a second line of defense, supporting short-time work schemes and similar measures, to help Member States protect jobs and thus employees and self-employed against the risk of unemployment and loss of income. Loans provided to Member States under the SURE instrument are underpinned by a system of voluntary guarantees from Member States. Each Member State's contribution to the overall amount of the guarantee corresponds to its relative share in the total gross national income (GNI) of the European Union, based on the 2020 EU budget. The establishment of SURE is a further tangible expression of Union solidarity, whereby the Member States agree to support each other through the Union by making additional financial resources available through loans.

Following proposals for additional assistance of €3.8 billion to 7 Member States (Belgium, Cyprus, Greece, Hungary, Latvia, Lithuania and Malta), the Council has approved a total of €94.4 billion in financial support to 19 Member States, based on Commission's proposals. With the latest disbursement (29 March 2022), the EU has provided €91.8 billion in back-to-back loans. All 19 EU Member States which have asked to benefit from the scheme have received part or all of the requested amount. Other Member States can still submit requests to receive financial support under SURE which has an overall firepower of up to €100 billion». Cfr.

component of the NGEU by potential beneficiary countries requires the preliminary definition of a set of investments and strategic reforms, which can be inscribed in a coherent, high-profile planning and organizational framework.

The complexity of drafting, submitting, and approving the PNRR for each EU member state is an excellent example of the reality that, because individual countries need to seek the approval of the European institutions, their access to resources has been made more difficult and more conditional. Gaining this access involves at least three steps. First, prospective and systematic efforts must be made to define the strategic purposes of the resources made available by the European Commission to the individual member states through the specific programs included in the NGEU to ensure that they comply with the European objectives. Second, these strategic aims must be translated into concrete projects that are submitted for approval by the European institutions, and must then be implemented in limited time periods. Finally, the individual projects must be implemented through the effective transfer of the various flows of resources to their final beneficiaries.

Therefore, an operational agreement (or several agreements) - in which the details regarding the methods, goals, objectives, and schedules for implementing and monitoring the PNRR are outlined -is required. Furthermore, if loans are also disbursed, as is the case for Italy, Spain, and some other countries, the respective member state and the Commission have to sign a dedicated agreement.[37]

In the case of Italy, this agreement is complex, and provides for a series of articulated regulatory interventions identified in the decision of the Council of the European Union of July 2021,[38] and in the time schedule published on the website of the Camera dei Deputati (the Italian House of Representatives).[39] For each measure provided for in the plan, the following are specified: the term within which the adoption of the measure is indicated; the type of regulatory intervention that will follow up the plan (e.g., parliamentary statutes, delegated legislation, legislative decrees, or ministerial and governmental provisions), as well as an indication of whether the measure is connected to public finances; and the mission

https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/financial-assistance-eu/funding-mechanisms-and-facilities/sure_en#:~:text=Specifically%2C%20the%20SURE%20instrument%20acts,unemployment%20and%20loss%20of%20income, retrieved 9 June 2022.

[37]The agreement must provide all the elements required under art. 15 RRF and art. 220.5 of the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union. In addition, member states benefiting from a loan must open a dedicated account for the management of the loan.

[38] Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Italy, 6 July 2021, on line at https://data.consilium.europa.eu/doc/document/ST-10160-2021-INIT/it/pdf.

[39] On line at https://temi.camera.it/leg18/pnrr/cronoprogramma.html.

the measure is intended to fulfil, or the type of reform the state seeks to implement through the measure.

As in the Marshall Plan, in the Recovery Fund, there is a very high level of control by the lender; that is, by an actor external to the beneficiary state. For the ERP, as we have seen, it was the ECA that, in its various forms, thoroughly monitored the correct execution of the commitments made by the recipient state in exchange for US aid. In the event of default or improper implementation, it could go as far as terminating the financial assistance agreement.

For the Recovery Fund, the European Commission and the Council can resolve the partial or total suspension of commitments and payments, both in the event that the beneficiary state has failed to fulfil one of the many conditionalities on which the disbursement of financial support or the relevant intermediate and final targets contained in its national plan were based; or in the event that it has violated the provisions of art. 10 RRF, which includes the measures used to link the support to healthy economic governance.[40]

In my opinion, what has been defined as “Il mercato delle riforme”[41] (the market of reforms) is not necessarily worthy of criticism or contempt, provided it is approached with prudence and awareness, while safeguarding the institutional and constitutional structures of the state and implementing effective vertical solidarity tools aimed at achieving social equality and the redistribution of income and wealth.

Both the Marshall Plan and the NGEU represent development cooperation devices and internal policy instruments.

Regarding the conditionalities under which financial aid is granted, there is little doubt that in both cases there have been too many conditionalities, and that the imposition of these conditionalities is a symptom of the persistence of “external constraints” through which sovereignty is conditioned and limited by entities – in this case, legal systems – other than the national legal order.

---

[40] Cfr. art. 10, RRF, which provides for a proposal for the total or partial suspension of commitments or payments in one of the following cases: a) when member states have not taken effective measures to correct their excessive deficit, i.e., in the event of a breach of the Agreement Stability; b) when the Council adopts two successive recommendations as part of the procedure for excessive macroeconomic imbalances governed by Regulation (EU) no. 1176/2011 because the member state has presented an insufficient corrective action plan, or when it considers that the member state is in default because it has not taken the recommended measures; c) when a member state has not adopted the measures referred to in Regulation (EC) no. 332/2002; d) if the Council decides that a member state does not comply with the macroeconomic adjustment program referred to in art. 7 of reg. (EU) no. 472/2013 on strengthening the economic and budgetary surveillance of member states in the euro area that are or are in danger of experiencing serious difficulties regarding their financial stability or the measures required by a Council decision adopted pursuant to Article 136, paragraph 1, of the TFEU.

[41] A. Somma, *Il mercato delle riforme. Appunti per una storia critica dell’Unione europea*, in *Materiali per una storia della cultura giuridica*, 1, 2018, 167-194.

A self-imposed constraint is, obviously, chosen and desired by the governments of the beneficiary states, who, by invoking it to their citizens, have been able to justify all of their economic policy decisions, and not just the decisions related to the aid. However, states may also find it much easier to "outsource" the responsibility for political choices and regulatory reforms that would otherwise be made by the national government.[42]

Therefore, in the EU vs. the member state dynamic, the external constraint becomes an internal policy tool that is used in a functional way, and is directly proportional to the European integration objective.

In both the Marshall Plan and the Recovery Fund, the financing mechanisms were subject to categorical constraints and specific conditionalities. Today, from the point of view of the legal systems of the member states, European integration, which passes through the Recovery Fund, rests on the foundations of the external constraint. I think that this should not be considered scandalous.

Instead, it is necessary to create and monitor the conditions under which the external constraint is not simply translated into knowingly allowing the economic and financial bureaucracy of the European and international institutions – which may be seen as technocratic and highly deficient from the point of view of fostering democracy and representativeness – to dictate the rules, while national politics and national legislators, who are responsible for determining the content of the structural reforms to be implemented, abdicate their functions.[43]

After all, it appears very difficult and at times dystopian and schizophrenic to imagine a process that creates integration based on economic, social, health, and, ultimately, legislative choices that are not shared across the member states, and that therefore do not translate into external bonds that are both desired and shared.

While integration and the external constraint can never be inversely proportional, the issue is how Italy (and member states, in general) should participate in the process through which decisions are made at the European level. Integration necessarily passes through the harmonization and standardization of law and the economy; that is, through the increasing relevance of the external constraint, and through forms of suppression of sovereignty. Individual states can and must act and participate in ways that preserve their sovereignty and enable them to participate in decision-making. Whether they succeed in doing so depends on the

[42] On the "european external costraint", see L. Bouza Garcia, *The 'New Narrative Project' and the politicisation of the* EU, in *Journal of Contemporary European Studies*, 25.3, 2017, 340-353; W. Kaiser, *One narrative or several? Politics, cultural elites, and citizens in constructing a New Narrative for Europe*, in *National Identities*, 19.2, 2017, 215-230; D. Pasquinucci, *From narrative to counter-narrative: the European constraint and the rise of Italian populist Euroscepticism*, in *Journal of Contemporary European Studies*, 30.1, 2022, 39-51.
[43] F. Salmoni, cit., 77 ss.

quality of their political and leadership class, and on the willingness of the public administration to play a supporting role.
It is important to continue to hope that (and to work to ensure that) the external constraint does not function as a political tool that operates from within, which the government uses to abdicate its responsibilities before the parliament. The government cannot and should not merely serve the function of ratifying decisions taken elsewhere[44] by technocratic and financial elites.[45]
The national plans are above all reform plans. Reforms must be seen as integral parts of national plans, and as catalysts for their implementation. In line with the Commission Recommendations, the reforms envisaged in the plan address the country's structural weaknesses, and support the recovery and the resilience of Italy's economic and social systems.
While this is not the place to analyze actions and targets or to provide forecasts of their effects, it is important to highlight here that the Italian PNRR not only outlines investment projects, but also the modernization reforms the government intends to adopt. The implementation of these reforms represents the constraint that allows Italy to obtain funding from the EU.
The Italian plan calls for different types of reforms that can be summarized into three broader types: 1) horizontal reforms, 2) enabling reforms, and 3) sectoral reforms.
The horizontal reforms include structural changes to the legal system aimed at improving equity, efficiency, and competitiveness; and changes to the country's economic framework. The plan identifies two different types of horizontal reforms: reforms of the public administration and reforms of the judicial system.
The enabling reforms are functional reforms aimed at ensuring the full implementation of the plan and removing administrative, regulatory, and procedural obstacles. This group of reforms includes rationalization measures related to the legislation, the simplification of the rules of public procurement, competition legislation, anti-corruption legislation, fiscal federalism, the reduction in PA payment times, and efforts to close the tax gap.
Finally, the sectoral reforms consist of regulatory innovations that are related to specific areas of intervention or economic activities, and that are intended to introduce more efficient regulatory and procedural regimes into the respective sectoral areas defined within the different missions of the plan. Examples include

[44] On the downsizing of the role of Parliament also due to the "European external constraint", A. Guazzarotti, *La subordinazione degli Stati al potere dei mercati finanziari attraverso la misurazione competitiva del diritto*, in *Politica del diritto*, 3, 2018, 387-408; Id., *Sovranità e integrazione europea*, in *Rivista AIC*, 3, 2017, on line at https://www.rivistaaic.it/images/rivista/pdf/11.%203_2017_Guazzarotti_.pdf, retrieved 9 June 2022.
[45] R. Gualtieri, *L'Europa come vincolo* esterno, in P. Craveri & A. Varsori (eds.), *L'Italia nella costruzione europea: un bilancio storico (1957-2007)*, Franco Angeli, Milano, 2009, 323.

interventions concerning work, social policies, and families; education, universities, and research; transportation; and the environment and energy.
It is evident that money is not enough to put countries on a stable and successful path to recovery, and that reorganizing projects through reforms will be challenging, especially given that countries are expected to complete these reforms by 2023-24. Whether these reforms, and the PNRR more generally, prove successful will depend not only on the government and the parliament currently in office, but also on the next legislature.
Thus, the time schedule for the interventions – i.e., for the implementation of both the projects and the reforms – is very demanding. Meeting these deadlines is crucial for the effective implementation of the PNRR, especially given that the disbursement of funds is conditional on the effective use of the first tranches of the loan, as well as on the completion of the reforms deemed necessary to ensure the effectiveness of the intervention plan. In this context, it should be noted that the parliament did not (or very little) participate in the preparation, approval, and management of the plan. Instead, a number of ministerial and inter-ministerial decrees on around 60 regulatory measures that are to be adopted based on the PNRR have been transmitted to Brussels. While a large share of these decrees are laws, most of the legislative decrees have been adopted on the basis of delegated laws of a government initiative in which both the terms and the guiding principles and criteria are often already listed in the plan.

4.1 Conditionalities as tools for cooperation and economic development: the file rouge among the US and the EU plans

As was mentioned, conditionalities are external constraints, and are intended to coerce countries, that would otherwise almost certainly default on their debts, to implement supranational and international dictates in exchange for receiving financial aid.
With regard to the conditionalities of the Recovery Fund, in addition to the obligation to spend the money to carry out reforms and make investments in the political areas of European relevance structured in the six pillars provided for by the regulation on the RRF, the member states must also comply with the Regulation on the Rule of Law[46] and the goals provided by art. 4.1 reg. RRF, including, for example, ensuring the economic, social and territorial cohesion of the EU by contributing to upward economic and social convergence; restoring and promoting

[46] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, on line at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020R2092&from=IT, retrieved 9 June 2022.

sustainable growth and the integration of the EU's economies; encouraging the creation of high quality jobs; contributing to the strategic autonomy of the EU and an open economy; and generating added value for Europe.
Moreover, in their Recovery and Resilience Plans, member states must comply with the conditionalities contained in the Annual Strategy for Sustainable Growth 2021;[47] that is, with the four guiding principles identified therein, which represent the priorities at the center of the European Semester (i.e., environmental sustainability, productivity, equity, and macroeconomic stability), as well as with the obligations on sound economic governance provided under art. 10 RRF.
In addition to the conditionalities outlined above, there are conditionalities linked to the monitoring of the achievement of "milestones and targets" for which each country is obliged to provide quarterly reporting; and conditionalities contained in the country-specific Recommendations adopted as part of the European Semester. In particular, the 2020 Recommendation[48] and the 2019 Recommendation[49] require countries to pursue budgetary policies aimed at achieving prudent medium-term budgetary positions and ensuring debt sustainability; to ensure coordination between national and regional authorities, especially in the health sector; and to improve the efficiency of the judicial system and the functioning of the public administration. Therefore, in addition to all of the essential reforms countries are expected to implement to address their structural challenges in the medium to long term, these conditionalities will remain relevant and will continue to be monitored, and will also be considered with regard to the mitigation and exit measures implemented in the current crisis.
Among these conditionalities, some that stand out include the obligations to adopt all of the necessary measures to ensure future reductions in nominal terms of net primary public expenditure, corresponding to annual structural adjustments as a percentage of GDP; to adopt fiscal policies that help in correcting the imbalances linked to the high public debt; to reform the labor market; to address restrictions on competition, particularly in the retail and business services sectors, including

[47] Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, Annual Sustainable Growth Strategy 2021, COM/2020/575 final, on line at https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020DC0575, retrieved 9 June 2022.
[48] Council Recommendation of 20 July 2020 on the 2020 National Reform Programme of Italy and delivering a Council opinion on the 2020 Stability Programme of Italy, (2020/C 282/12), on line at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2020.282.01.0074.01.ENG&toc=OJ%3AC%3A2020%3A282%3AFULL, retrieved 9 June 2022.
[49] Council Recommendation, of 9 July 2019, on the 2019 National Reform Programme of Italy and delivering a Council opinion on the 2019 Stability Programme of Italy, (2019/C 301/12), on line at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019H0905(12)&from=IT, retrieved 9 June 2022.

through a new annual competition law; to introduce a property tax, to update cadastral values, and to increase VAT; to improve administrative capacity as an indispensable prerequisite for ensuring the effectiveness in the provision of public investments and the use of EU funds, which is expected to have positive spill-over effects on private investment and GDP growth; to fully implement past pension reforms in order to reduce the burden of pensions on public spending; and to reform the Italian banking system.[50]

This system of conditionalities – which for the state takes the form of a debt to give or not to give, to do or not to do – can lead to forms of subordination and structural homologation of the member states.[51]

A certain doctrine has critically highlighted how the conditionalities provided by the Recovery Fund put pressure on the countries that will use these funds, giving rise to a sort of sanctioning, if not an extortive effect, [52] which translates into having access to financial assistance, but only in exchange for agreeing to make structural reforms and public investments, which should, in turn, attract private investments aimed at increasing market competitiveness.

A fundamental difference between the US and the European plan is linked to the nature of the lender: in the first case, the lender is international, and the funding is in the form of an instrument of international cooperation offered by a sovereign state (the US); while in the second case, the funding is provided on a regional basis, and is based on the creation of a "common public debt" among the EU member states, who are part of a voluntary and shared supernational community (legal order).

The main beneficiary of the ERP was the United Kingdom, which received 50% of the aid made available; followed by France, which received around 20% of the aid; and by Italy and Germany, which each received 10% of the aid. Here, another difference emerges. The United Kingdom is excluded from the NGEU plan due to Brexit, and Italy is the main beneficiary (receiving more than France and Germany).

Among the most obvious differences between the two interventions are the differences in the time horizons of the plans. The NGEU is set to operate for three years (2021-2023), at least in its first phase. The Marshall Plan operated between 1948 and 1951. While the Marshall Plan was initially intended to last for four years, although it ended one year earlier due to the Korean War. To date, the Recovery Fund, is expected to last for five years.

The Marshall Plan did not have the level of success that is often attributed to it, but it achieved important results because it allowed European countries to buy time, to

[50] F. Salmoni, cit., 2021, passim.

[51] A. Somma, *Il mercato delle riforme. Appunti per una storia critica dell'Unione europea*, cit., 184-185.

[52] F. Salmoni, cit., 81 ss.

stabilize their political frameworks, and find far-reaching compromises. From a strategic point of view, the Marshall Plan was intended to repair what could be repaired by acting as soon as possible to revitalize the sectors that were already dominant in the pre-war economy, and did not aim to encourage countries to adopt long-term plans, in part because a primary goal of the US government was to move quickly to counter the political hegemony of the Soviet opponent. Indeed, the United States wanted to facilitate the rapid recovery of the European economy, as well as to ensure political and social stability.

Another essential point is the significant currency problem that existed from the beginning of the ERP, and that was addressed by building a monetary exchange system that transfers dollars through a sort of triangulation of payments. In the context of the NGEU, this problem no longer exists thanks to the single European currency, the euro; and due to the substantial integration of the markets.

The main objective similarities between the two instruments in question lie in their structures, methods of financial assistance, monitoring and controls, conditionalities, possible sanctions, and purposes: i.e., to save the European states from a post-war or a post-pandemic crisis.

While the Marshall Plan was financed entirely by the Americans, the Recovery Fund is financed entirely by the European Union or, more precisely, by the money the European Commission will be able to raise by issuing its own bonds and selling them on the financial markets.

This is a fundamental difference, because the Recovery Fund is not rooted in the basic philosophy of the Marshall Plan, which called for the "westernization" of the countries that received aid.

In 1945, there were countries that had to be completely rebuilt, the cost of labor was negligible, and global trade was very limited. In quantitative terms, the ERP channeled $13.3 billion from the United States (about 5.4% of US GDP) to 16 European countries between April 1948 and June 1952 (excluding Spain as a dictatorship).

Calculating inflation alone, $13 billion in 1950 corresponds to just over $140 billion today. But given that GDP as well as price levels have risen in the last 70 years, the $140 billion is more in real terms, even if making a precise comparison is difficult. According to the Observatory on Public Accounts of the Catholic University of Milan, the $1.5 billion that arrived in Italy corresponded to approximately 9.2% of the average Italian GDP in those years. Thus, if we consider that the Italian GDP in

2019 was €1,787 billion, 9.2% roughly corresponds to €164 billion; a figure not much lower than the €206 billion provided by the Recovery Fund.[53]
Originally, the Marshall Plan was aimed primarily at Great Britain and France, and these two countries indeed received the largest shares of aid, of $3.2 billion and $2.7 billion, respectively. Italy was the third-largest beneficiary, receiving $1.5 billion in aid. Obviously, the main purpose of the Marshall Plan was to provide economic support to Europe, including to Italy, to meet the political objectives of the US. The US also had the specific objective of not letting the country fall under control of the nascent Soviet bloc. For the same reason, Germany, a key country in the confrontation with the Soviet Union, which entered the project a year later, received $1.4 billion in aid. Even the EU RFF and the NGEU undoubtedly have a strong political purpose: i.e., the strengthening of the European Union, the Single Market, and the Monetary Union, which are likely to be negatively affected by highly divergent growth rates when the pandemic crisis and the actual Russian-Ukrainian war's one will end.
Like the Recovery Fund is today, the Marshall Plan was also subject to conditionalities because most of the aid was non-repayable, and only $1.3 billion of the aid was in the form of loans. This approach was considered necessary to stabilize currencies; to create a European commercial network; to promote agricultural and industrial production; and to encourage trade with the United States, which needed healthy economic partners.
In the case of Italy, goods that arrived from the US were received by the government, which paid sums equal to their value to a counterpart fund in the name of the Treasury, which was intended to reduce debt and encourage investment. As was mentioned above, all transactions were subjected to a rigid system of controls, but the final aid decisions fell to the ECA.
Aid consisting of coal, wheat, cotton, cereals, fuel, and machinery were the main imports in the four-year period. Copper, steel products, seeds, fertilizers, and synthetic rubber were also imported. Out of the money obtained from the sale of these goods to individuals, the Minister of the Budget at the time, Luigi Einaudi, used a portion (about one-fifth) to make investments in the development of the steel industry, to support imports from the US, and to build the tourism and shipbuilding sectors. The rest of the money was put into the stabilization of the currency and the enhancement of savings. This policy helped to restore investor confidence in Italy, and laid the foundations for the boom of the following years[54].

[53] P. Mistura, *Abbiamo bisogno di un Piano Marshall?*, 16 April 2020, on line at https://osservatoriocpi.unicatt.it/.
[54] R. Gualtieri, *Piano Marshall, commercio estero e sviluppo in Italia: alle origini dell'europeismo centrista*, in *Studi storici*, 39.3, 1998, 853-897.

There were four criteria for the use of the funds Italy received from the Marshall Plan: whether the investment was urgent, whether it created jobs, whether it promoted income growth, and whether it provided support for depressed areas. As of June 30, 1951, 28% of the ERP investments were in agriculture (reclamation and credit), 23.4% were in industrial equipment, 16.9% were in public works, 12.3% were in transportation (especially railways), 5.4% were in the Ina Casa, and 3.1% were in construction. Social housing was built in the working-class neighborhoods[55]. A southern hydroelectric development plan was launched, and the ports (Genoa in particular) and the merchant navy were strengthened. Bridges were rebuilt. Almost all of the Italian municipalities were connected to telephone lines. Orphanages, roads, hospitals, aqueducts, sewer networks, and schools were constructed. Unlike the investments foreseen and planned in the PNRR, the Marshall Plan loans went above all to large industries, and thus, from a geographical perspective, ended up mainly in a well-defined industrial triangle in Piedmont, Lombardy, and Liguria. The PNRR, by contrast, has the declared intention to reduce the gap between the north and the south of Italy.

Of the loans granted to Italian companies under the Marshall Plan, Fiat received 12.4%, the IRI companies received 23.9%, and Edison received 8.6%. The money was not used in questionable bailouts, but this was in part because the country's industrial fabric and infrastructure had deteriorated so much at that point that it was easy to identify the few beneficiaries capable of re-emerging from the devastation of the war.

The resulting macroeconomic stabilization of Italy, the recovery in confidence in the country after its defeat in the war, and the reconstruction of and the investments in the Italian economy led to outcomes that exceeded those envisaged in the long-term plan presented to the OECE at the beginning of the development of the US aid program. Only agricultural production, fishing, and the transport of goods by rail grew less than expected.

Politically, the path followed by the Marshall Plan appears, somewhat absurdly, to be easier than the path the current government is expected to follow in investing PNRR funds. Today, we face a much more complex set of choices in a context characterized by highly articulated, strong, and polarized mechanisms for the representation of interests.

[55] M. Gabanelli, & D. Taino, *Il Recovery Fund è come il Piano Marshall?*, in *Corriere della Sera – Data room*, 8 February 2021.

5. Concluding remarks

The analysis presented above far leads me to offer some concluding reflections.

First, there has been a sudden change in the direction of European economic governance, as well as a real leap in the quality and in the coordination of EU policies, which have led to a combining of the horizontal surveillance of national fiscal policies with the vertical coordination of these policies and the European budget.

The NGEU will certainly add a decisive and innovative function to the EU's multi-year budgets, above all by guaranteeing a substantial issue of European debt securities (€750 billion), and thus by becoming the instrument for the initial allocation of large-scale resources aimed at ensuring the economic stabilization of the countries most affected by the pandemic crisis.

In addition, for the repayment of the part of the debt contracted by the member states, the future Multiannual Financial Frameworks will have to integrate the strengthening of revenues into the long-term budget, including through the contribution of new resources. This will be necessary to strengthen the centralized forms of representation, which will, in turn, lead the EU in the direction of greater political-institutional federalism.

Without the Recovery Fund, the EU was in danger of imploding. The sovereign debt crisis followed by Brexit had dealt ferocious blows to the economies of the member states, the euro, and the economic and monetary union.

The most important result that has so far been achieved by the Recovery Fund is that it has helped the EU rediscover its unity of intent, an ideal that had previously seemed hopelessly compromised. In short, the main effect of this instrument was that it woke the European Union from its slumber by prompting it to regroup around the policies of its member states.

Second, it is clear that the fate of Italy is increasingly dependent on the fate of Europe and the international community. Italy, as was mentioned above, will receive more resources than the other member states (the RRF alone guarantees €191.5 billion to be used in the 2021-26 period). The success (or failure) of Italy will therefore depend on the success (or failure) of the other European countries. This co-responsibility means that the timing of the reforms and the administrative and management capacity of local authorities and the Draghi government may determine the strengths or weaknesses of the entire reorganization project, strengthening its modernizing message if the outcomes are positive, or severely tarnishing the image of Europe with respect to nationalism if the outcomes are poor. The weaknesses of the Italian system today could therefore put the European system at risk, indirectly transmitting a considerable disadvantage to the organization. Furthermore, a failure of the RFF would likely benefit the sovereign

and populist parties and movements that continue to contest the design of community integration.
Finally, the winds of Atlanticism and Europeanism are blowing today as they were in the mid-20th century. After the Second World War, the danger came from the USSR, and was fought by offering the European states the prospect of economic recovery and aid from the Marshall Plan. Today, as the pandemic crisis comes to a close, the US is rediscovering its ties to its European allies, and is trying to involve them in its efforts to challenge China, which appears to be undermining the US in its role as the first undisputed world superpower; and against Russia, which seems to be in the grips of a delirious nostalgia for the Czarist era.
If there is a geopolitical lesson that comes from the Covid-19 pandemic and the Russian-Ukrainian war, it is that is the various blocks are (inter-) dependent on each other, especially with regard to the circulation of goods, people, and capital.
It is natural that these challenging situations have made the countries of the EU more united, and it is also obvious that the United States is aiming to take advantage of this moment for its own foreign policy objectives. It is, however, clear that the survival of Europe – especially of a Europe that is financially and economically robust – is also indispensable to the international political framework.
The problems surrounding the democratic legitimacy of the EU and the political thrust of the integration process remain unresolved.
While the current historical and geopolitical contingencies have overwhelmed all pre-established supranational and national schemes, these challenging conditions could represent an opportunity to call for a constitutional change in the EU founding treaties that moves in the direction of the formation a European federal state based on fundamental rights and on the principle of substantial equality: i.e., toward the creation a social, democratic, and representative Europe. However, it seems likely that the political project will continue to play a secondary role, and that the EU will continue to function primarily as an instrument of economic integration. Thus, the construction of a united Europe appears to be limited to a 19th-century concept of the rule of law that does not take into account the most recent – and so far unsurpassed – achievements of contemporary social and democratic states.